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SUBJECT: LAND TENSIONS THREATEN SOUTHERN STABILITY

¶1. (SBU) Summary: Conflict in Sudan has been fueled in many cases by competition over land and other natural resources. Currently, there are no consistent land policies and laws to govern how land is to be allocated and used in Southern Sudan. The control of land is linked to historical "injustices" in southern Sudan, and is an extremely contentious issue. Officials and private individuals report being anxious about how land tenure and property rights will be (or are not being) addressed. This is already leading to some violence and deaths, and more importantly, it is fostering broad-based tensions within and among ethnic groups in the South. Land and property rights issues have the potential for triggering South-South violence and/or breakaway groups or states within the South. The absence of a coherent land tenure framework is a social time bomb that threatens the future stability of the region, and presents opportunities for destabilization by those who wish to undermine the Comprehensive Peace Agreement (CPA). End Summary

¶2. (SBU) Land is intrinsically connected to political, social and cultural identity in Southern Sudan and conflict over this issue is symptomatic of the greater regional struggle for control over the South. The issue is more contentious in areas where there are numerous overlapping competing land claims. Institutional weaknesses with regard to governmental control over land access and rights are endemic. The lack of clear lines of political authority and decision-making on land issues has resulted in either parallel structures without clear mandates and/or vacuums of authority in defining property rights and administering land.

¶3. (SBU) In geographical areas containing several ethnic groups competing for resources, specifically with both Pastoralist-Farmer tensions and high IDP/Refugee returns, or where there are competing claims over natural resources, such as with minerals and oil, or finally in areas of urban expansion, claims become more contentious. The greater the diversity of identity that exists in a geographic area, the more pressing the land issue becomes and the more volatile the political situation. This dynamic is particularly evident in and around Juba and in other urban areas. Local Bari leaders and youth in Juba, for example, have said that they are developing a "hatred" for the GOSS as a result of government mismanagement of this issue (some Bari reported killed a black goat to "curse" the new SPLA Interim HQ which is built on disputed land outside Juba).

¶4. (SBU) While there are some honest brokers, there are many who benefit from the current political vacuum by grabbing land and controlling natural resource distribution. This occurs as a result of a lack of transparency, rule of law, and no clear policy. The beneficiaries of the status quo are naturally reticent to support a process which might lead to the development of a comprehensive land law, policy and functioning institutions.

¶5. (SBU) For many in government at the GOSS and State level, there

is general recognition that this issue threatens stability and needs to be addressed. At the same time, many appear hesitant to take it on because of the extreme political sensitivity of the issue, resulting in political gridlock and inaction. This is politically dangerous.

¶16. (SBU) The bodies charged with dealing with land issues in Southern Sudan have so far proven themselves ineffective. In particular, the Southern Sudan Land Commission (SSLC) has been a disappointment. The commission has four members who are political appointees from different ethnic groups. There is no technical staff or capacity to develop policy, effectively propose laws, or engage in discussion with state and county governments, civil society or the private sector. Further, there also appears to be, at least at the SSLC, no political will under the current leadership to tackle the hard issues of land usage and distribution. With the help of a short-term land lawyer, the Commission did draft a land law in September of 2007 that it sent to the Ministry of Legal Affairs and Constitutional Development in October 2007. Key contacts at the Ministry said that the draft land law will be rejected and sent back to the Commission for revision. In the Ministry's view, the draft is "legally flawed" and lacks a written policy framework within which the law can operate. Such a policy, in the view of the Ministry, must be drafted first. To date, the law is still sitting with the Ministry and the SSLC has not been officially informed of its status. This state of affairs suggests the extent of political gridlock at high political levels.

¶17. (SBU) There is also a problem of overlapping lines of institutional authority to control land access, rights and administration, including between the GOSS, state governments, county governments and traditional authorities. The constitution gives state governments the authority to administer land; however, it does not stipulate processes or procedures for this delegation of authority. In the case of Central Equatorial State there is a clash over authority between the SSLC, GOSS, state governments and traditional authorities over land administration. For example, in Lake State, the state government has moved ahead on its own to develop laws to administer urban land. Nevertheless, the state government is waiting for guidance from the SSLC on land policy, law and administrative procedures.

¶18. (SBU) Meanwhile, the CPA and the Constitution have created expectations and confusion on land tenure and property rights. People expect that the GOSS (and particularly the Land Commission) will provide land tenure guidance, and the State Land Office will administer land. At the same time the language in the constitution that "land belongs to the people," has empowered some traditional authorities to assert their power in areas that are highly prized, such as in urban areas where investment might take place. This empowerment of traditional authorities may be coming at the expense of stronger "private" rights for families and clans rather than "communities."

THE WAY FORWARD

¶19. (SBU) The State Department and USAID will look to provide intellectual leadership and technical assistance to Southern Sudan to address land tenure and property rights challenges and opportunities. This assistance will be divided into two phases: short-term immediate needs and longer-term institutional capacity building.

¶10. (SBU) The first step in our plan is to promote a political dialogue at the level of the Office of the President to bring together key high level government officials. The purpose of the dialogue is to provide an opportunity for the USG to emphasize its commitment to Southern Sudan, encourage the GOSS to move forward on this key issue, and to offer technical support to ultimately develop a comprehensive land tenure and property rights policy.

¶11. (SBU) USAID will next seek to provide legal technical expertise to develop a comprehensive land tenure/property rights policy. The plan is to initiate this through a high-level "Land Policy Development Forum." The Forum will be funded and technically supported by USAID in coordination with other donors. The goal is for this to become an initiative of the President of the GOSS and supported by senior GOSS ministers, governors, traditional leaders,

select civil society representatives and East African representatives.

¶12. (SBU) Comment: Reducing South-South tensions will help reinforce Southern Unity, minimizing the opportunity for external intervention working to divide the South. Addressing land tenure issues in 2008 will also help to reduce overall tensions prior to elections in 2009. It is important to recall that South Sudan's last peace accord - the 1972 Addis Ababa Agreement - collapsed in part because of tensions between Equatorians and cattle herding Nilotic tribes like the Dinka. Recent events in Kenya can be traced to land tenure security and community identities in the Rift Valley, and now is the time to be creating policies that avoid similar conflict from erupting in Southern Sudan.

¶13. (SBU) Comment Continued: Further, in order to create an enabling environment for economic recovery and development, it is essential that land tenure security be established. Economic recovery is one of the key peace dividends that Southern Sudanese are counting on out of the peace process, but without clear land tenure policies, it will be seriously hampered. Moreover with clear property rights and rules governing land tenure and administration, South Sudan will be equipped to benefit from internal and external investment, the development of land and asset markets, and greater capital flows.

FERNANDEZ